

CHAPTER NO. 183

SENATE BILL NO. 403

By Jackson

Substituted for: House Bill No. 517

By Fowlkes, Ulysses Jones, John DeBerry

AN ACT To amend Tennessee Code Annotated, Title 7, Chapter 51, Part 11, relative to the Adult-Oriented Establishment Registration Act of 1998.

WHEREAS, The General Assembly enacted the "Adult-Oriented Establishment Registration Act of 1998," 1998 Tenn. Pub. Acts Ch. 1090, as set forth in its Preamble and Legislative History, as a reasonable time, place, manner regulation to attempt to address some recognized deleterious secondary effects on the community commonly associated with adult-oriented establishments, including but not limited to an increase in crime, the spread of sexually-oriented diseases, the downgrading of property values, and other public health, safety, and welfare issues; and

WHEREAS, It is the intent of the General Assembly to regulate adult-oriented establishments, operators, employees, entertainers, and escorts in a constitutionally permissible manner to attempt to address these deleterious secondary effects; and

WHEREAS, It is the intent of the General Assembly to clarify the scope, meaning, and effect of certain sections, clauses, or provisions of the Adult-Oriented Establishment Registration Act of 1998; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-51-1103, is amended by adding the following as a new, appropriately designated subsection:

(h) To further the purposes of this part, the board shall have authority to promulgate procedural rules and any substantive rules consistent with this part that are constitutionally valid and promulgated in such a way as to not offer unbridled discretion to the board in making decisions whether to grant, deny, revoke, or suspend a license or permit.

SECTION 2. Tennessee Code Annotated, Section 7-51-1104(e), is amended by deleting the first sentence and substituting instead the following:

All existing adult-oriented establishments, entertainers, employees, escorts, or operators, at the time this part is given local effect pursuant to Section 7-51-1120, must submit an application for an appropriate license or permit within one hundred twenty (120) days of this part becoming effective in such county.

SECTION 3. Tennessee Code Annotated, Section 7-51-1106(4), is amended by adding the following at the end of the subsection:

The board shall only deny an application for a license for reasons set forth in this part.

SECTION 4. Tennessee Code Annotated, Section 7-51-1107(c), is amended by deleting the subsection in its entirety and substituting instead the following:

If an additional investigation is held and is not a result of actions by the applicant, upon the expiration of the thirtieth day from the filing of the application, the applicant shall be permitted to operate the business for which the license is sought, unless or until the board or its authorized representative notifies the applicant of a denial of the application and states the reasons for that denial.

SECTION 5. Tennessee Code Annotated, Section 7-51-1109(f), is amended by adding the following at the end of the subsection:

If a board decision is found by the court to be clearly erroneous, the court may overturn the decision as being arbitrary or capricious.

SECTION 6. Tennessee Code Annotated, Section 7-51-1110(d), is amended by adding the following language at the end of the subsection:

The applicant shall cooperate in expediting completion of service of process by the board when initiating a declaratory action under this part.

SECTION 7. Tennessee Code Annotated, Section 7-51-1110(e), is amended by deleting the subsection in its entirety and by substituting instead the following:

(e) The board shall have the burden of showing that the denial of an application under this section is not arbitrary or capricious. If a denial of the application by the board is found by the court to be clearly erroneous, the court may overturn the action as being arbitrary or capricious.

SECTION 8. Tennessee Code Annotated, Section 7-51-1110, is amended by adding the following as a new, appropriately designated subsection:

(f) The provisions of this part mandating judicial review shall control over general provisions for declaratory judgment actions in the event of any conflict.

SECTION 9. Tennessee Code Annotated, Section 7-51-1111(a), is amended by deleting the last sentence and substituting instead the following:

The application for renewal shall contain such information and data relevant to the renewal request, including information related to the applicant's qualifications or whether there are grounds for denial of renewal, and shall be given under oath or affirmation, as may be required by the board, but not less than the information contained in the original application.

SECTION 10. Tennessee Code Annotated, Section 7-51-1111(d), is amended by deleting the last sentence and by substituting instead the following:

The application for renewal shall be upon a form provided by the board and shall contain such information and data relative to the renewal request (such as the

applicant's qualifications, or whether there are grounds for denying the renewal), given under oath or affirmation, as may be required by the board.

SECTION 11. Tennessee Code Annotated, Section 7-51-1113, is amended by deleting subsection (i) in its entirety and renumbering the existing subsections accordingly.

SECTION 12. Tennessee Code Annotated, Section 7-51-1114(a), is amended by deleting the subsection in its entirety, and by substituting instead the following language:

(a) No operator, entertainer or employee of an adult-oriented establishment (either on the premises or in relation to the person's role as an operator, entertainer, or employee of an adult-oriented establishment) shall permit to be performed, offer to perform, perform, or allow patrons to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

SECTION 13. Tennessee Code Annotated, Section 7-51-1116(d), is amended by deleting the subsection in its entirety and substituting instead the following:

If an additional investigation is held and it is not caused by actions of the applicant, upon the expiration of the thirtieth day from the filing of the application, the applicant shall be permitted to work as an entertainer, employee, or escort for which the permit is sought, unless or until, the board or its authorized representative notifies the applicant of the denial of the application and states reasons for that denial.

SECTION 14. Tennessee Code Annotated, Section 7-51-1117(b), is amended by adding the following at the end of the subsection:

The board shall only deny a permit application for reasons set forth in this part.

SECTION 15. Tennessee Code Annotated, Section 7-51-1121(a), is amended by adding the following at the end of the subsection:

Except as specified in this part, such other lawful and reasonable restrictions, regulations, licensing, and other criminal, civil, or administrative provisions shall not be a basis for the board denying, revoking, or suspending a license or permit under this part.


SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 3, 2001




JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 10th day of May 2001



DON S. QUIGLEY, GOVERNOR